

SUMMARY OF BIJOU COMMENTS TO SPR TASK FORCE

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By Mike Shimmin

- OVERVIEW OF BIJOU SYSTEM
 - 25,000 acres irrigated in Weld and Morgan Counties
 - Direct flow and storage surface water rights
 - 200 wells with an augmentation plan decreed in 1985 that replaces all out of priority depletions
 - Recharge water rights to supply augmentation plan
 - Priorities include 1972, 1980's, 1990's, and 2001-04
 - This year Bijou ran approximately 30,000 acre feet of recharge water
 - So, Bijou is on both sides of this debate - surface water and ground water
- BASELINE PRINCIPLE - WE SHOULD ALL BE PLAYING BY THE SAME RULES
 - When some have decreed augmentation plans and others do not, it is not fair
 - Example - Bijou is actually replacing depletions caused by other wells.
 - During the drought, wells not in augmentation plans pumped without full replacement. This reduced yield of Bijou's surface water rights, which caused more pumping of Bijou wells
 - Because Bijou replaces all of its out of priority well depletions, it is now effectively covering not only its own depletions, but the increased depletions not replaced by others
 - Many Bijou wells have long lag times, and Bijou will be paying this "double bill" for the next 30-50 years
 - Also, during shortages, junior wells have pumped without replacement when senior surface rights were dry. This is not fair.
 - Can't just make ditches drill wells
 - Well water costs more and does not go as far in the field as ditch water.
 - Who will pay the seniors to give up what they have had?
 - Delayed depletions mean that wells do not affect the river at the same time as surface diversions do.
 - This is not an easy fix.
- THE RULES WE PLAY BY HAVE TO BE BASED ON PRIOR APPROPRIATION. OTHERWISE, SENIOR RIGHTS WILL BE INJURED.
 - After great thought, I have concluded that the law we have is pretty close to where it needs to be.
 - Whole purpose for inventing augmentation plans in 1969 was to allow junior water uses without injuring senior rights. They do that pretty well.
 - Remember, augmentation plans only have to replace the depletions that are out of priority. If they don't do that, they are definitely injuring senior rights.
 - People say we need conjunctive use. Augmentation plans do that.

- SOME FOLKS SAY WE NEED MORE "WATER MANAGEMENT", BUT THAT ONLY WORKS WHEN THERE IS PLENTY OF WATER
 - Increasing evidence that 1970's - 1990's were the wettest period in many years
 - Water management worked then because there was plenty to go around
 - When there is a shortage, then the priority system "manages" the water by allocating it in order of seniority
 - Anything else would just be taking water from senior rights and giving it to juniors, which is illegal.
 - To the extent we can vary from strict administration of priorities, it is done under plans for augmentation, which allow out of priority diversions that do not injure seniors.

- WINTER DEFERRALS ARE REALLY COMPLEX, AND LIKELY TO INJURE SENIOR RIGHTS.
 - If they can work, it will be very complicated and they need to go through water court- not be left to the Division Engineer
 - No paper fill of senior reservoirs without the owner's consent - if the reservoir does not fill, how do you find the water to fill it.
 - Even is a private deal could be made, what about the lost return flows for downstream rights?
 - Many ways that this can injure senior rights. It is not an easy fix.

- DON'T RUSH TO CONCLUSION THAT WATER COURT PROCESS IS BROKEN
 - This has been raised before (10-15 years ago) and Water Court clerks provided statistics
 - 96% of all cases resolved by Referee without formal process
 - 4% of all cases re-referred to Water Judge
 - 1% of all cases went to trial
 - I think the Water Court process works pretty well. It is only the biggest cases that cost a lot, because they involve lots of water and/or major issues of law, and those are the ones that we hear about
 - Please get all of the facts - don't rely on emotion or perception - before changing this process

- WHAT CAN BE DONE?
 - Need more water storage and recharge, and wells need to be in decreed augmentation plans
 - Whatever state can do to help is good.
 - Where will the money come from?
 - Bijou would support a cut-off date of 1974, which would mean that current depletions from pumping before 1974 would not have to be replaced. It has been in all of the decreed plans. Fair to apply that rule to everyone.